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GENERAL COUNSEL'S OPINION NUMBER 55-15, DATED 5 MAY 1955

An employee may not be recredited with leave in excess of the maximum accumulation allowed by the Annual Leave Act even though the excess accumulation results from the re-payment of a lump sum leave payment erroneously made by the Agency.

TO THE DIRECTOR OF COMMUNICATIONS

1. Reference is made to your memorandum stating the facts surrounding the forfeiture of 210 hours of annual leave accumulated in 1952 and 1953 by subject, which accumulation was in excess of the statutory limit of 720 hours allowed this employee.

2. A memorandum to your office from the Finance Division, dated 10 January 1955, sets forth subject's leave record and indicates that the lump sum payment in question was for only such leave as had been accumulated at the time of subject's transfer to unvouchered funds on 8 December 1951. Subject was not paid for any leave earned after this date. Therefore, we assume that paragraph 2 of your memorandum is meant to indicate that the total leave accumulations at the end of 1952 and 1953 include some leave for which subject had previously been paid in a lump sum. This conclusion is correct but does not put subject in any better position than he would otherwise be.

3. It is recognized that because of the erroneous lump sum payment of leave in December, 1951, and the fact that subject was not notified of the error until October, 1953, he may have been led to believe that his accumulations of leave during 1952 and 1953 would not be in excess of the statutory limit. Therefore, he may have elected not to take leave during this period and to save it for use at a later time. However, subject's loss of excess leave, which was accumulated under the belief that it was within the allowable limits, can be traced directly to the error of the Agency officials who authorized the lump sum payment of accumulated leave at the time of subject's transfer to unvouchered funds. Such a loss cannot be remedied since it is due to the mistake of an agent of the Government. It is a rule of long standing that the Government cannot be bound by an agent acting without authority. Two decisions of the Comptroller General have ruled on the point in question. In 32 Comp. Gen. 22 (1952) it was held that an employee erroneously separated from a position who received a lump sum payment for annual leave, and who later was restored to said position retroactive to the date of separation, is required to refund the lump sum leave payment, even though the annual leave accumulation restriction provisions of the Annual Leave Act preclude recrediting the employee's account with all the annual leave covered by the lump sum payment.

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Also see 32 Comp. Gen. 162 (1952) and 34 Comp. Gen. 17 (1954), where it was held that employees required to refund lump sum payments must forfeit leave represented by such refund when in excess of the statutory accrual allowance.

25X1A 4. There is no evidence that subject's situation would have fulfilled the requirements of [] providing for suspended leave accounts. That regulation provides that:

"When the conditions of an employee's cover employment preclude his use of sufficient annual leave to escape the forfeiture provisions . . . the Assistant Director for Personnel may authorize the credit of his unused leave to a suspended leave account . . ."

25X1C [] and thus it would appear that there were no policy or security considerations peculiar to his employment which prevented him from using his annual leave. In the absence of evidence that subject's situation was one which might have been covered by the regulation providing for suspended leave accounts, it is unnecessary to consider the possibility of retroactive application of this regulation.

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